



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200943046

UIL No. 0408.03-00,

JUL 30 2009

LEGEND

Individual A =

SE: T. EP: RA: T4

Individual B =

IRA X =

Company Y =

Trust T =

Subtrust X:

Subtrust Y:

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Amount M =

State C =

Dear:

This is in response to a letter dated June 16, 2008, as supplemented by correspondence dated July 10, 2008 and July 6, 2009, submitted on your behalf by your authorized representative, in which you request a ruling under section 408(d) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury, in support of the ruling request:

Individual A, whose date of birth was Date 1, died testate on Date 2, a resident of State C, a community property state, having attained age 70 1/2. Individual A was survived by his spouse, Individual B, whose date of birth is Date 3.

At his death, Individual A owned IRA X with Company Y, and had begun receiving distributions from IRA X pursuant to section 401(a)(9) of the Code. As of Date 4, the value of IRA X was Amount M. It has been represented that IRA X either met or meets the requirements of section 408(a) of the Code.

On Date 5, Individuals A and B executed Trust T. Trust T is a grantor trust and is irrevocable. The IRA X beneficiary designation form dated Date 6, designated Trust T as the primary beneficiary of IRA X. Under Article 1 and Article XV, Paragraph 15a, of Trust T, Individual B became the sole trustee of Trust T upon Individual A's death. Your authorized representative asserts that Trust T is valid under the laws of State C.

Article 6, Paragraph 6a, of Trust T provides, in part, that settlors have designated, or have stated that they may designate, this trust as the beneficiary of certain life insurance policies on either or both settlors' lives and death benefits payable on either or both settlors' lives under any pension, profit sharing or other form of retirement plan.

Paragraph 6d of Article 6 provides, in part, that subject to any contrary provision in the beneficiary designation of any policy, all sums payable under any policy shall be allocated between Subtrust X and Subtrust Y as provided in Article 7 of this instrument, and by taking into consideration the ownership of the policy immediately before the insured's death.

Article 7 of Trust T provides for the creation of Trust T shares upon the death of Individual A or B. Under paragraph 7a of Article 7, the first settler to die shall be called the "deceased spouse." On the death of the deceased spouse, the trustee shall divide the trust estate, including any additions made to the trust by reason of his or her death, such as from the decedent's will or life insurance policies on the decedent's life, into two separate trusts, designated "Subtrust X" and "Subtrust Y".

Paragraph 7b(1) of Article 7 provides that Subtrust X shall consist of the surviving spouse's interest in the settlors' community estate and the surviving spouse's separate estate, if any, included in or added to the trust estate in any manner, including any undistributed or accrued income on it, and the marital deduction amount identified in paragraph 7b(2).

Paragraph 7b(2) of Article 7 of Trust T, in relevant part, provides that Subtrust X of Trust T shall also be funded with an amount that would reduce or eliminate the Federal Estate Tax attributable to Individual A's death after taking into account the remaining language of Paragraph 7b(2).

Article 8, Paragraph 8b, of Trust T provides, in part, that from the time of death of the deceased spouse, the trustee shall pay to or apply for the benefit of the surviving spouse the net income of Subtrust X in quarter-annual or more frequent installments. Paragraph 8b of Article 8 of Trust T also provides, in relevant part, that the "...Trustee shall pay or apply for the benefit of the Surviving Spouse such amounts of the principal and any accrued or undistributed net income of Subtrust X, up to the whole of it, as the Surviving Spouse may direct from time to time".

Article 10, Paragraph 10a, of Trust T provides in part that during the joint lifetimes of the settlors, this trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either settlor and delivered by certified mail to the trustee and the other settlor, and with respect to separate property by an instrument in writing signed by the settlor who contributed that property to the trust, delivered by certified mail to the trustee.

Paragraph 10c of Article 10 provides that on the death of the deceased spouse, the surviving spouse shall have the power to amend, revoke, or terminate Subtrust X, but Subtrust Y may not be amended, revoked, or terminated. On the death of the surviving spouse, neither trust may be amended, revoked, or terminated. On revocation or termination of the Subtrust X, all its assets shall be delivered to the surviving spouse.

Article 14, Paragraph 14e, of Trust T provides in part that the validity of this trust and the construction of its beneficial provisions shall be governed by the laws of State C in force from time to time.

Your authorized representative asserts that the custodians of IRA X were provided with information concerning the terms of Trust T and the identities of the beneficiaries in a timely manner; that funds of IRA X have not been distributed except for those sufficient to satisfy the required minimum distribution rules under section 401(a)(9) of the Code; that all debts, funeral bills, taxes and expenses of Individual A's estate were paid from assets other than IRA X; and that at all times subsequent to Individual A's death, IRA X has been maintained in his name.

Pursuant to relevant language of Trust T, Individual B, as trustee of Trust T, will allocate IRA X to Subtrust X. Upon allocation of IRA X's proceeds to Subtrust X, Individual B as beneficiary of Subtrust X, and pursuant to language contained in said Subtrust X, intends to demand payment of all of the IRA X proceeds from Subtrust X. Individual B, as trustee of Trust T/Subtrust X, will honor said request and distribute IRA X to Individual B. Upon receipt, Individual B will roll over said

distribution (less the calendar years 20 , 20 and 20 required minimum distributions) into an IRA set up and maintained in her name. Such rollover shall occur no later than the 60th day following the day IRA X is distributed to Trust T, and will be completed no later than December 31, 20 .

Based on these facts and representations, you request the following ruling:

1. That, if the IRA X proceeds are paid to Trust T, allocated to Subtrust X, distributed to Individual B from Trust T/Subtrust X, and timely reinvested/rolled over into an individual retirement account set up in the name of and maintained for the benefit of Individual B, that the distribution of the plan proceeds from Individual A's IRA X and subsequent rollover into Individual B's recipient IRA will qualify as a transfer to an eligible retirement plan within the meaning of section 408(d) of the Code; and
2. That, if the distribution/rollover satisfies the requirements of Code section 408(d), then the amounts timely rolled over into Individual B's recipient IRA will not be taxed to either Trust T, Subtrust X, or Individual B in the calendar year in which the distribution/rollover occurs (20).

With respect to your ruling requests, section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means

an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner. Thus, under circumstances that conform with the requirements of section 408(d)(3) of the Code, a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse.

Section 408(a)(6) of the Code provides, in relevant part, that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) of the Code shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 408(d)(3)(E) of the Code provides, in general, that distributions required to be made under section 408(a)(6) may not be rolled over.

"Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987- 19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final Regulations" provides, in relevant part, that a surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60 day period. A rollover may be accomplished even if IRA assets pass through either a trust or an estate.

Generally, if the proceeds of a decedent's IRA are payable to a trust, and are paid to the trustee of the trust who then pays them to the decedent's surviving spouse as the beneficiary of the trust, the surviving spouse shall be treated as having received the IRA proceeds from the trust and not from the decedent. Accordingly, such surviving spouse, in general, shall not be eligible to roll over the distributed IRA proceeds into her own IRA. There are exceptions to the general rule, however, and it is necessary to determine if the fact pattern outlined above qualifies for an exception.

The general rule will not apply in a case where the surviving spouse is the sole trustee of the decedent's trust and has the sole authority, power, and/or discretion under trust language to pay the IRA proceeds to herself. In such a case, the surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name.

In this case, although Individual A had not named Individual B as beneficiary of IRA X, under Individual A's Date 6 beneficiary designation, Trust T was the named beneficiary of his IRA X. Furthermore, under the provisions of Trust T, IRA X will be allocated to Trust T's Subtrust X, and, pursuant to the provisions of Subtrust X, IRA X may be paid to Individual B upon her demand.

Individual B is Individual A's surviving spouse, Trustee of Trust T and the sole beneficiary of Subtrust X with the power to demand payment of Subtrust X assets. IRA X will be allocated to Trust T's Subtrust X. Then, as Subtrust X beneficiary, Individual B will request payment of the full amount held in IRA X. Upon receipt of the IRA X distribution, Individual B then will roll over said distribution (less the calendar years 2011-2012 required minimum distributions) into an IRA set up and maintained in her name. Said rollover will be made within the time frame stated in Code section 408(d)(3)(A)(i).

Based on the above, the Service will not apply the general rule described above but will treat Individual B as a surviving spouse who is eligible to roll over the above-described IRA X interest into an IRA set up and maintained in her name. Therefore, with respect to your ruling requests, we conclude as follows:

1. That, if, as represented, the IRA X proceeds are paid to Trust T, allocated to Subtrust X, distributed to Individual B from Trust T/Subtrust X, and timely reinvested/rolled over into an individual retirement account set up in the name of and maintained for the benefit of Individual B, that the distribution of the proceeds from Individual A's IRA X and subsequent rollover into Individual B's recipient IRA will qualify as a transfer to an eligible retirement plan within the meaning of section 408(d) of the Code; and

2. That, if the distribution/rollover is timely and otherwise satisfies the requirements of Code section 408(d), then, the amounts timely rolled over into Individual B's recipient IRA will not be taxed to either Trust T, Subtrust X, or Individual B in the calendar year in which the distribution/rollover occurs (2011).

In accordance with section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of amounts that were required to be distributed by section 401(a)(9) of the Code, made applicable to an IRA pursuant to Code section 408(a)(6) (if any).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling letter is based on the assumption that IRA X either met, meets, or will meet the requirements of Code section 408(a) at all times relevant thereto. It also assumes that any rollover IRA established by Individual B will meet the requirements of section 408 at all times relevant thereto. Finally, this ruling letter rests on the assumption that Trust T is valid under the laws of State C as represented.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at ()
***. Please address all correspondence to: SE:T:EP:RA:T4,

Sincerely yours,

A handwritten signature in cursive script, reading "Donzell H. Littlejohn".

Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: